MISSOURI COURT OF APPEALS WESTERN DISTRICT

VILLAGE OF BIG LAKE, MISSOURI, A MISSOURI MINICIPALITY, APPELLANT

VS.

BNSF RAILWAY COMPANY, INC., AND MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION, RESPONDENT

DOCKET NUMBER WD74613

DATE: AUGUST 28, 2012

Appeal from:

The Circuit Court of Holt County, Missouri The Honorable Roger M. Prokes, Judge

Appellate Judges:

Division Three: Victor C. Howard P.J., Karen King Mitchell and Cynthia L. Martin, JJ.

Attorneys:

Rex A. Sharp, for Appellant

John W. Koenig, Jr., for Respondent Missouri Department of Highway and Transportation

Douglas R. Dalgleish, for Respondent BNSF Railway Company

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS WESTERN DISTRICT

VILLAGE OF BIG LAKE, MISSOURI, A MISSOURI MUNICIPALITY, APPELLANT v. BNSF RAILWAY COMPANY, INC., AND MISSOURI HIGHWAYS AND TRANSPORTATION COMMISION, RESPONDENTS

WD74613 Holt County, Missouri

Before Division Three: Victor C. Howard, P.J., Karen King Mitchell and Cynthia L. Martin, JJ.

The Village of Big Lake, Missouri, appeals the trial court's dismissal of its petition for injunctive relief against BNSF Railway Company, Inc., and Missouri Highways and Transportation Commission (MHTC). The Village alleged that over fifteen years, BNSF raised the height of its track in and around the Village and that MHTC raised Highway 111 at the intersection of the highway and the rail line without complying with the Village's Model Floodplain Management Ordinance and section 389.660, RSMo 2000, regarding the drainage of railroad right-of-ways and roadbeds. The judgment is affirmed.

AFFIRMED.

Division Three holds:

- (1) As a form of local permitting or preclearance process requiring BSNF to conduct a hydrological and hydraulic study, provide the results to the Village, and obtain a permit from the Village before constructing a rail line within the southern border of the Village, the Ordinance falls into the two broad categories of state and local actions that are categorically preempted by section 10501 of the Interstate Commerce Commission Termination Act of 1995 (ICCTA). Likewise, Section 389.660 requiring openings, ditches, and drains through and along roadbeds involves the construction of a railroad bed over which the Surface Transportation Board has exclusive jurisdiction pursuant to section 10501(b) of the ICCTA. Thus, the trial court properly dismissed the Village's claims against BNSF.
- (2) Where no clear indication is given that the legislature intended that MHTC, an executive department of the state government, must comply with the Ordinance in constructing Highway 111 at the intersection of the highway and the rail line, the Ordinance cannot be enforced against the MHTC. The trial court properly dismissed the Village's claim against the MHTC.

Opinion by: Victor C. Howard, Judge Date: August 28, 2012